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SENATE BILL 142

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING THE  
UNEMPLOYMENT COMPENSATION LAW TO PERMIT A NEW EMPLOYER IN NEW  
MEXICO TO ELECT USE OF OUT-OF-STATE FORMER HISTORY TO ESTABLISH  
CONTRIBUTION RATE; CHANGING THE CONTRIBUTION RATE FOR CERTAIN  
EMPLOYERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 51-1-11 NMSA 1978 (being Laws 1961,  
Chapter 139, Section 3, as amended by Laws 2000, Chapter 3,  
Section 3 and by Laws 2000, Chapter 7, Section 3) is amended to  
read:

"51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE. --

A. The division shall maintain a separate account  
for each contributing employer and shall credit ~~his~~ the  
contributing employer's account with all contributions paid by

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1     ~~[him]~~ that employer under the Unemployment Compensation Law.  
2     Nothing in the Unemployment Compensation Law shall be construed  
3     to grant ~~[any]~~ an employer or individuals in ~~[his]~~ the  
4     employer's service prior claims or rights to the amounts paid  
5     by the employer into the fund.

6             B.   Benefits paid to an individual shall be charged  
7     against the accounts of ~~[his]~~ the individual's base-period  
8     employers on a pro rata basis according to the proportion of  
9     ~~[his]~~ the individual's total base-period wages received from  
10    each employer, except that no benefits paid to a claimant as  
11    extended benefits under the provisions of Section 51-1-48 NMSA  
12    1978 shall be charged to the account of any base-period  
13    employer who is not on a reimbursable basis and who is not a  
14    governmental entity and, except as the secretary shall by  
15    ~~[regulation]~~ rule prescribe otherwise, in the case of benefits  
16    paid to an individual who:

17                   (1) left the employ of a base-period employer  
18    who is not on a reimbursable basis voluntarily without good  
19    cause in connection with ~~[his]~~ the individual's employment;

20                   (2) was discharged from the employment of a  
21    base-period employer who is not on a reimbursable basis for  
22    misconduct connected with ~~[his-work]~~ the individual's  
23    employment;

24                   (3) is employed part time by a base-period  
25    employer who is not on a reimbursable basis and who continues

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1 to furnish the individual the same part-time work while the  
2 individual is separated from full-time work for a  
3 nondisqualifying reason; or

4 (4) received benefits based upon wages earned  
5 from a base-period employer who is not on a reimbursable basis  
6 while attending approved training under the provisions of  
7 Subsection E of Section 51-1-5 NMSA 1978.

8 C. The division shall not charge a contributing or  
9 reimbursing base-period employer's account with any portion of  
10 benefit amounts that the division can bill to or recover from  
11 the federal government as either regular or extended benefits.

12 D. All contributions to the fund shall be pooled  
13 and available to pay benefits to any individual entitled  
14 thereto, irrespective of the source of such contributions. The  
15 standard rate of contributions payable by each employer shall  
16 be five and four-tenths percent.

17 E. ~~No~~ An employer's rate shall not be varied from  
18 the standard rate for any calendar year unless, as of the  
19 computation date for that year, ~~his~~ the employer's account  
20 has been chargeable with benefits throughout the preceding  
21 thirty-six months, except that:

22 (1) the provisions of this subsection shall  
23 not apply to governmental entities;

24 (2) subsequent to December 31, ~~1984~~ 2002,  
25 any employing unit that becomes an employer subject to the

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1 payment of contributions under the Unemployment Compensation  
2 Law or has been an employer subject to the payment of  
3 contributions at a standard rate of two [~~and seven-tenths~~]  
4 percent through December 31, [~~1984~~] 2002 shall be subject to  
5 the payment of contributions at the reduced rate of two [~~and~~  
6 ~~seven-tenths~~] percent until, as of the computation date of a  
7 particular year, the employer's account has been chargeable  
8 with benefits throughout the preceding thirty-six months; [~~and~~]

9 (3) any individual, type of organization or  
10 employing unit that acquires all or part of the trade or  
11 business of another employing unit, pursuant to Paragraphs (2)  
12 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has  
13 a reduced rate of contribution shall be entitled to the  
14 transfer of the reduced rate to the extent permitted under  
15 Subsection G of this section; and

16 (4) an employer that, at the time of  
17 establishing an account, is in business in another state or  
18 states and that is not currently doing business in New Mexico  
19 may elect, pursuant to Paragraph (5) of this subsection, to  
20 receive a beginning contribution rate of two percent or a  
21 contribution rate based on the rate schedule in Paragraph (4)  
22 of Subsection H of this section, whichever is lower, but in no  
23 event less than one percent if:

24 (a) the employer has been in operation  
25 in the other state or states for at least three years

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1 immediately preceding the date of becoming a liable employer in  
2 New Mexico, throughout which an individual in the employer's  
3 employ could have received benefits if eligible;

4 (b) the employer provides the  
5 authenticated account history from information accumulated from  
6 operations in the other state or all the other states to  
7 compute a current New Mexico rate; and

8 (c) the employer's business operations  
9 established in New Mexico are of the same nature as conducted  
10 in the other state or states, as defined by the north American  
11 industry classification system;

12 (5) the election authorized in Paragraph (4)  
13 of this subsection shall be made in writing within thirty days  
14 after receiving notice of New Mexico liability and, if not made  
15 timely, a two percent rate will be assigned; if the election is  
16 made timely, the employer's account will receive the rate  
17 elected for the remainder of that rate year, but the rate  
18 assigned for the next and subsequent years will be determined  
19 by the condition of the account on the computation date.

20 F. The secretary shall, for the year 1942 and for  
21 each calendar year thereafter, classify employers in accordance  
22 with their actual experience in the payment of contributions  
23 and with respect to benefits charged against their accounts,  
24 with a view of fixing such contribution rates as will reflect  
25 such benefit experience. ~~Each~~ An employer's rate for any

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1 calendar year shall be determined on the basis of [~~his~~] the  
2 employer's record and the condition of the fund as of the  
3 computation date for such calendar year.

4 An employer may make voluntary payments in addition to the  
5 contributions required under the Unemployment Compensation Law,  
6 which shall be credited to [~~his~~] the employer's account in  
7 accordance with department [~~regulation~~] rule. The voluntary  
8 payments shall be included in the employer's account as of the  
9 employer's most recent computation date if they are made on or  
10 before the following March 1. Voluntary payments when accepted  
11 from an employer shall not be refunded in whole or in part.

12 G. In the case of a transfer of an employing  
13 enterprise, the experience history of the transferred  
14 enterprise as provided in Subsection F of this section shall be  
15 transferred from the predecessor employer to the successor  
16 under the following conditions and in accordance with the  
17 applicable [~~regulations~~] rules of the secretary:

18 (1) Definitions:

19 (a) "employing enterprise" is a business  
20 activity engaged in by a contributing employing unit in which  
21 one or more persons have been employed within the current or  
22 the three preceding calendar quarters;

23 (b) "predecessor" means the owner and  
24 operator of an employing enterprise immediately prior to the  
25 transfer of such enterprise;

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1 (c) "successor" means any individual or  
2 any type of organization that acquires an employing enterprise  
3 and continues to operate such business entity; and

4 (d) "experience history" means the  
5 experience rating record and reserve account, including the  
6 actual contributions, benefit charges and payroll experience of  
7 the employing enterprise.

8 (2) For the purpose of this section, two or  
9 more employers who are parties to or the subject of any  
10 transaction involving the transfer of an employing enterprise  
11 shall be deemed to be a single employer and the experience  
12 history of the employing enterprise shall be transferred to the  
13 successor employer if the successor employer has acquired by  
14 the transaction all of the business enterprises of the  
15 predecessor; provided that:

16 (a) all contributions, interest and  
17 penalties due from the predecessor employer have been paid;

18 (b) notice of the transfer has been  
19 given in accordance with the ~~regulations~~ rules of the  
20 secretary within four years of the transaction transferring the  
21 employing enterprise or the date of the actual transfer of  
22 control and operation of the employing enterprise;

23 (c) in the case of the transfer of an  
24 employing enterprise, the successor employer must notify the  
25 division of the acquisition on or before the due date of the

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1 successor employer's first wage and contribution report. If  
2 the successor employer fails to notify the division of the  
3 acquisition within this time limit, the division, when it  
4 receives actual notice, shall effect the transfer of the  
5 experience history and applicable rate of contribution  
6 retroactively to the date of the acquisition, and the successor  
7 shall pay a penalty of fifty dollars (\$50.00); and

8 (d) where the transaction involves only  
9 a merger, consolidation or other form of reorganization without  
10 a substantial change in the ownership and controlling interest  
11 of the business entity, as determined by the secretary, the  
12 limitations on transfers stated in Subparagraphs (a), (b) and  
13 (c) of this paragraph shall not apply. ~~[No]~~ A party to a  
14 merger, consolidation or other form of reorganization described  
15 in this paragraph shall not be relieved of liability for any  
16 contributions, interest or penalties due and owing from the  
17 employing enterprise at the time of the merger, consolidation  
18 or other form of reorganization.

19 (3) The applicable experience history may be  
20 transferred to the successor in the case of a partial transfer  
21 of an employing enterprise if the successor has acquired one or  
22 more of the several employing enterprises of a predecessor but  
23 not all of the employing enterprises of the predecessor and  
24 each employing enterprise so acquired was operated by the  
25 predecessor as a separate store, factory, shop or other

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1 separate employing enterprise and the predecessor, throughout  
2 the entire period of [~~his~~] the contribution with liability  
3 applicable to each enterprise transferred, has maintained and  
4 preserved payroll records that, together with records of  
5 contribution liability and benefit chargeability, can be  
6 separated by the parties from the enterprises retained by the  
7 predecessor to the satisfaction of the secretary or [~~his~~] the  
8 secretary's delegate. A partial experience history transfer  
9 will be made only if:

10 (a) the successor notifies the division  
11 of the acquisition, in writing, not later than the due date of  
12 the successor's first quarterly wage and contribution report  
13 after the effective date of the acquisition;

14 (b) the successor files an application  
15 provided by the division that contains the endorsement of the  
16 predecessor within thirty days from the delivery or mailing of  
17 such application by the division to the successor's last known  
18 address; and

19 (c) the successor files with the  
20 application a Form ES-903A or its equivalent with a schedule of  
21 the name and social security number of and the wages paid to  
22 and the contributions paid for each employee for the three and  
23 one-half year period preceding the computation date as defined  
24 in Subparagraph (d) of Paragraph (3) of Subsection H of this  
25 section through the date of transfer or such lesser period as

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1 the enterprises transferred may have been in operation. The  
2 application and Form ES-903A shall be supported by the  
3 predecessor's permanent employment records, which shall be  
4 available for audit by the division. The application and Form  
5 ES-903A shall be reviewed by the division and, upon approval,  
6 the percentage of the predecessor's experience history  
7 attributable to the enterprises transferred shall be  
8 transferred to the successor. The percentage shall be obtained  
9 by dividing the taxable payrolls of the transferred enterprises  
10 for such three and one-half year period preceding the date of  
11 computation or such lesser period as the enterprises  
12 transferred may have been in operation by the predecessor's  
13 entire payroll.

14 H. For each calendar year, adjustments of  
15 contribution rates below the standard or reduced rate and  
16 measures designed to protect the fund are provided [~~as follows~~]  
17 in Paragraphs (1) through (4) of this subsection.

18 (1) The total assets in the fund and the total  
19 of the last annual payrolls of all employers subject to  
20 contributions as of the computation date for each year shall be  
21 determined. These annual totals are here called "the fund" and  
22 "total payrolls". For each year, the "reserve" of each  
23 employer qualified under Subsection E of this section shall be  
24 fixed by the excess of [~~his~~] the employer's total contributions  
25 over total benefit charges computed as a percentage of [~~his~~]

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1 the employer's average payroll reported for contributions. The  
2 determination of each employer's annual rate, computed as of  
3 the computation date for each calendar year, shall be made by  
4 matching ~~[his]~~ the employer's reserve as shown in the reserve  
5 column with the corresponding rate ~~[shown in]~~ in the rate  
6 column of the applicable rate schedule of the table provided in  
7 Paragraph (4) of this subsection.

8 (2) Each employer's rate for each calendar  
9 year commencing January 1, 1979 or thereafter shall be:

10 (a) the corresponding rate in schedule 1  
11 of the table provided in Paragraph (4) of this subsection ~~[on~~  
12 ~~the corresponding line as his reserve]~~ if the fund equals at  
13 least three and four-tenths percent of the total payrolls;

14 (b) the corresponding rate in schedule 2  
15 of the table provided in Paragraph (4) of this subsection ~~[on~~  
16 ~~the corresponding line]~~ if the fund has dropped to less than  
17 three and four-tenths percent and not less than two and seven-  
18 tenths percent of the total payrolls;

19 (c) the corresponding rate in schedule 3  
20 of the table provided in Paragraph (4) of this subsection ~~[on~~  
21 ~~the corresponding line]~~ if the fund has dropped to less than  
22 two and seven-tenths percent and not less than two percent of  
23 the total payrolls;

24 (d) the corresponding rate in schedule 4  
25 of the table provided in Paragraph (4) of this subsection ~~[on~~

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1 ~~the corresponding line]~~ if the fund has dropped to less than  
2 two percent and not less than one and one-half percent of the  
3 total payrolls;

4 (e) the corresponding rate in schedule 5  
5 of the table provided in Paragraph (4) of this subsection [~~on~~  
6 ~~the corresponding line]~~ if the fund has dropped to less than  
7 one and one-half percent and not less than one percent of the  
8 total payrolls; or

9 (f) the corresponding rate in schedule 6  
10 of the table provided in Paragraph (4) of this subsection [~~on~~  
11 ~~the corresponding line]~~ if the fund has dropped less than one  
12 percent of the total payrolls.

13 (3) As used in this section:

14 (a) "annual payroll" means the total  
15 amount of remuneration from an employer for employment during a  
16 twelve-month period ending on a computation date, and "average  
17 payroll" means the average of the last three annual payrolls;

18 (b) "base-period wages" means the wages  
19 of an individual for insured work during [~~his~~] the individual's  
20 base period on the basis of which [~~his~~] the individual's  
21 benefit rights were determined;

22 (c) "base-period employers" means the  
23 employers of an individual during [~~his~~] the individual's base  
24 period; and

25 (d) "computation date" for each calendar

1 year means the close of business on June 30 of the preceding  
 2 calendar year.

3 (4) Table of employer reserves and  
 4 contribution rate schedules:

5 Employer Reserve	Contri buti on 6 Schedule 1	Contri buti on 7 Schedule 2	Contri buti on 8 Schedule 3
9 10.0% and over	0.05%	0.1%	0.6%
10 9.0%- 9.9%	0.1%	0.2%	0.9%
11 8.0%- 8.9%	0.2%	0.4%	1.2%
12 7.0%- 7.9%	0.4%	0.6%	1.5%
13 6.0%- 6.9%	0.6%	0.8%	1.8%
14 5.0%- 5.9%	0.8%	1.1%	2.1%
15 4.0%- 4.9%	1.1%	1.4%	2.4%
16 3.0%- 3.9%	1.4%	1.7%	2.7%
17 2.0%- 2.9%	1.7%	2.0%	3.0%
18 1.0%- 1.9%	2.0%	2.4%	3.3%
19 0.9%- 0.0%	2.4%	3.3%	3.6%
20 (-0.1%) - (-0.5%)	3.3%	3.6%	3.9%
21 (-0.5%) - (-1.0%)	4.2%	4.2%	4.2%
22 (-1.0%) - (-2.0%)	5.0%	5.0%	5.0%
23 Under (-2.0%)	5.4%	5.4%	5.4%

24 Employer Reserve	Contri buti on 25 Schedule 4	Contri buti on Schedule 5	Contri buti on Schedule 6
10.0% and over	0.9%	1.2%	2.7%
9.0%- 9.9%	1.2%	1.5%	2.7%

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1	8.0%- 8.9%	1.5%	1.8%	2.7%
2	7.0%- 7.9%	1.8%	2.1%	2.7%
3	6.0%- 6.9%	2.1%	2.4%	2.7%
4	5.0%- 5.9%	2.4%	2.7%	3.0%
5	4.0%- 4.9%	2.7%	3.0%	3.3%
6	3.0%- 3.9%	3.0%	3.3%	3.6%
7	2.0%- 2.9%	3.3%	3.6%	3.9%
8	1.0%- 1.9%	3.6%	3.9%	4.2%
9	0.9%- 0.0%	3.9%	4.2%	4.5%
10	(- 0.1%) - (- 0.5%)	4.2%	4.5%	4.8%
11	(- 0.5%) - (- 1.0%)	4.5%	4.8%	5.1%
12	(- 1.0%) - (- 2.0%)	5.0%	5.1%	5.3%
13	Under (- 2.0%)	5.4%	5.4%	5.4%.

14 I. The division shall promptly notify each employer  
15 of ~~[his]~~ the employer's rate of contributions as determined for  
16 any calendar year pursuant to this section. Such notification  
17 shall include the amount determined as the employer's average  
18 payroll, the total of all ~~[his]~~ of the employer's contributions  
19 paid on ~~[his own]~~ the employer's behalf and credited to ~~[his]~~  
20 the employer's account for all past years and total benefits  
21 charged to ~~[his]~~ the employer's account for all such years.  
22 Such determination shall become conclusive and binding upon the  
23 employer unless, within thirty days after the mailing of notice  
24 thereof to ~~[his]~~ the employer's last known address or in the  
25 absence of mailing, within thirty days after the delivery of

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1 such notice, the employer files an application for review and  
2 redetermination, setting forth [~~his~~] the employer's reason  
3 therefor. The employer shall be granted an opportunity for a  
4 fair hearing in accordance with [~~regulations~~] rules prescribed  
5 by the secretary, but [~~no~~] an employer shall not have standing,  
6 in any proceeding involving [~~his~~] the employer's rate of  
7 contributions or contribution liability, to contest the  
8 chargeability to [~~his~~] the employer's account of any benefits  
9 paid in accordance with a determination, redetermination or  
10 decision pursuant to Section 51-1-8 NMSA 1978, except upon the  
11 ground that the services on the basis of which such benefits  
12 were found to be chargeable did not constitute services  
13 performed in employment for [~~him~~] the employer and only in the  
14 event that [~~he~~] the employer was not a party to such  
15 determination, redetermination or decision, or to any other  
16 proceedings under the Unemployment Compensation Law in which  
17 the character of such services was determined. The employer  
18 shall be promptly notified of the decision on [~~his~~] the  
19 employer's application for redetermination, which shall become  
20 final unless, within fifteen days after the mailing of notice  
21 thereof to [~~his~~] the employer's last known address or in the  
22 absence of mailing, within fifteen days after the delivery of  
23 such notice, further appeal is initiated pursuant to Subsection  
24 D of Section 51-1-8 NMSA 1978.

25 J. The division shall provide each contributing

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1 employer, within ninety days of the end of each calendar  
2 quarter, a written determination of benefits chargeable to  
3 ~~[his]~~ the employer's account. Such determination shall become  
4 conclusive and binding upon the employer for all purposes  
5 unless, within thirty days after the mailing of the  
6 determination to ~~[his]~~ the employer's last known address or in  
7 the absence of mailing, within thirty days after the delivery  
8 of such determination, the employer files an application for  
9 review and redetermination, setting forth ~~[his]~~ the employer's  
10 reason therefor. The employer shall be granted an opportunity  
11 for a fair hearing in accordance with ~~[regulations]~~ rules  
12 prescribed by the secretary, but ~~[no]~~ an employer shall not  
13 have standing in any proceeding involving ~~[his]~~ the employer's  
14 contribution liability to contest the chargeability to ~~[his]~~  
15 the employer's account of any benefits paid in accordance with  
16 a determination, redetermination or decision pursuant to  
17 Section 51-1-8 NMSA 1978, except upon the ground that the  
18 services on the basis of which such benefits were found to be  
19 chargeable did not constitute services performed in employment  
20 for ~~[him]~~ the employer and only in the event that ~~[he]~~ the  
21 employer was not a party to such determination, redetermination  
22 or decision, or to any other proceedings under the Unemployment  
23 Compensation Law in which the character of such services was  
24 determined. The employer shall be promptly notified of the  
25 decision on ~~[his]~~ the employer's application for

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1 redetermination, which shall become final unless, within  
2 fifteen days after the mailing of notice thereof to ~~his~~ the  
3 employer's last known address or in the absence of mailing,  
4 within fifteen days after the delivery of such notice, further  
5 appeal is initiated pursuant to Subsection D of Section 51-1-8  
6 NMSA 1978.

7 K. The contributions, together with interest and  
8 penalties thereon imposed by the Unemployment Compensation Law,  
9 shall not be assessed nor shall action to collect the same be  
10 commenced more than four years after a report showing the  
11 amount of the contributions was due. In the case of a false or  
12 fraudulent contribution report with intent to evade  
13 contributions or a willful failure to file a report of all  
14 contributions due, the contributions, together with interest  
15 and penalties thereon, may be assessed or an action to collect  
16 such contributions may be begun at any time. Before the  
17 expiration of such period of limitation, the employer and the  
18 secretary may agree in writing to an extension thereof and the  
19 period so agreed on may be extended by subsequent agreements in  
20 writing. In any case where the assessment has been made and  
21 action to collect has been commenced within four years of the  
22 due date of any contribution, interest or penalty, including  
23 the filing of a warrant of lien by the secretary pursuant to  
24 Section 51-1-36 NMSA 1978, such action shall not be subject to  
25 any period of limitation.

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1 L. The secretary shall correct any error in the  
2 determination of an employer's rate of contribution during the  
3 calendar year to which the erroneous rate applies,  
4 notwithstanding that notification of the employer's rate of  
5 contribution may have been issued and contributions paid  
6 pursuant to the notification. Upon issuance by the division of  
7 a corrected rate of contribution, the employer shall have the  
8 same rights to review and redetermination as provided in  
9 Subsection I of this section.

10 M Any interest required to be paid on advances to  
11 this state's unemployment compensation fund under Title 12 of  
12 the Social Security Act shall be paid in a timely manner as  
13 required under Section 1202 of Title 12 of the Social Security  
14 Act and shall not be paid, directly or indirectly, by the state  
15 from amounts in the state's unemployment compensation fund.

16 [~~N. Notwithstanding the provisions of this section,~~  
17 ~~the rate in schedule 1 of the table provided in Paragraph (4)~~  
18 ~~of Subsection H of this section shall be applied for four~~  
19 ~~calendar years beginning January 1, 1999.] "~~